

**REMARKS**

Claims 1-51, 57-85, 123-126, 128-130, 132, 133, 136-142 and 145-149 are pending in this application. No claims have been amended canceled or added.

Applicant gratefully acknowledges the withdrawal of the prior rejections under 35 U.S.C. 112 2<sup>nd</sup> paragraph.

**Art Rejections**

In the Office Action claims 1, 2, 4-7, 14, 16-35, 38-50, 56-60, 62-67, 69-73, 75-80, 123-126, 128-130, 132, 133, 136-142, and 145-149 stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. patent 4,552,857 to Higgins (HIGGINS '857) in view of U.S. Patent 5,610,207 to DE SIMONE et al. Continued rejection on this basis is respectfully traversed and reconsideration is requested at this time.

In making a determination of obviousness, the references must be considered for everything they teach including portions which would lead away from the claimed invention. With the background of the teachings of the prior art, a proper obviousness analysis requires consideration of whether the prior art would have provided a motivation to one of skill in the art to engage in the proposed combination or modification as well as whether or not such a person would have a reasonable expectation that such a combination or modification would be successful.

In view of the narrow and restricted teachings in the secondary reference to DE SIMONE et al. regarding suitable constructions for rebonded foam in carpet backing applications, it is respectfully submitted that one of skill in the art having access to the DE SIMONE reference would actually be discouraged from attempting to modify the constructions disclosed in the primary HIGGINS '857 reference to incorporate rebonded foams due to the apparent need (as taught by DE SIMONE) to encapsulate such foams between two exterior layers and that at least one (and preferably both) of the exterior layers should be foam plastic material. Moreover, it is respectfully submitted that these teachings in the prior art are inconsistent with a conclusion that

the prior art would provide one of skill in the art with a reasonable expectation that the direct substitution of rebond foam for the foam layer in the carpet tile of the HIGGINS '857 patent would be successful.

The outstanding rejection states that "... it would have been obvious to one of skill in the art to substitute a rebond foam layer as taught by DE SIMONE, for the foam layer in HIGGINS." Applicants must respectfully disagree since in order to make such a substitution either the teachings of DE SIMONE would have to be ignored or a substantially different multi-layered construction would have to be imparted to the cushioning layer in the HIGGINS '857 carpet tile. Both of these approaches are inconsistent with a finding of obviousness.

As understood, the secondary reference to DE SIMONE teaches that some kind of rebonded foam laminate may be formed across a carpet backing fabric with the rebonded foam laminated between two outer layers of material. Preferably at least one and more preferably both of these layers are foam plastics material.

If the teachings of DE SIMONE regarding the need for two exterior layers are to be followed, the modification of the HIGGINS carpet tile as proposed by the Office Action would appear to result in the need to add at least one more layer of material as a lower encapsulating layer below the rebond foam. However, the addition of such a lower encapsulating layer would be undesirable due to the potential for delamination at the interface between the rebond and the lower layer. Moreover, the addition of another layer would add undesirable complexity to the manufacturing process. Finally, absent some adjustment to the remainder of the tile, an additional lower layer would likely result in a modification to the operation of the HIGGINS carpet tile thereby weighing further against the proposed modification. Alternatively, if the proposed modification to the HIGGINS '857 carpet tile contemplated by the Office Action is such that the structure of the tile is to be maintained without the addition of a lower encapsulating layer, based on the teachings in DE SIMONE, there is no reasonable expectation that the formation of such a structure is likely to be successful since DE SIMONE requires two outer layers.

Accordingly, in order to implement the modification proposed by the Office Action, either the basic structure of the HIGGINS tile must be changed or the teachings in DE SIMONE regarding outer layers must be ignored. The incorporation of a multilayered laminate incorporating rebond foam in place of the cushion layer in HIGGINS '857 would result in a new arrangement of layers which would likely alter the performance of the HIGGINS '857 tile. Moreover, the need to change the basic structure of the HIGGINS '857 carpet tile by the addition of a multilayered laminate incorporating rebond foam in place of the cushion layer in HIGGINS '857 would result in greater complexity and would provide a greater number of interfacial zones prone to delamination. Applicants respectfully submit that a proposed alteration to the primary reference which would require such substantial changes to the construction while adding complexity and increasing the possibility of delamination would not have been perceived as having a reasonable likelihood of success and is inconsistent with a determination of obviousness.

Aside from the deficiencies in the *prima facie* case of obviousness as outlined above, it is also respectfully submitted that the teachings in DE SIMONE as to the need to laminate the rebond foam between two outer layers when applied to a carpet backing weighs against the use of rebond foam in carpet tile as claimed. Specifically, the teachings in DE SIMONE appear to reflect the accepted wisdom that rebonded foam lacks substantial stability unless laminated between covering layers.

Carpet tile usually has more stringent dimensional stability requirements than broadloom. Thus, even if a rebonded foam construction as taught in DE SIMONE could be used with a reasonable expectation of success in a broadloom carpet, such an expectation would not translate to a carpet tile in which performance requirements are much greater.

In the Office Action claims 3, 8, and 15 stand rejected under 35 U.S.C. 103(a) as being obvious over HIGGINS '857 and DE DIMONE et al. and further in view of EP 048 986. Continued rejection on this basis is respectfully traversed and reconsideration is requested on the grounds as set forth above that the primary combination of references fails to establish a *prima facie* case of obviousness with respect to the base independent claim.

In the Office Action claims 36, 37, 51, and 81-85 stand rejected under 35 U.S.C. 103(a) as being obvious over HIGGINS '857 and DE SIMONE and further in view of U.S. Patent 5,540,968 to Higgins (HIGGINS '968). Continued rejection on this basis is respectfully traversed and reconsideration is requested on the grounds that the primary combination of references fails to establish a *prima facie* case of obviousness with respect to the base independent claims as set forth above. Moreover, it is respectfully submitted that by advocating two covering layers over the rebond foam DE SIMONE et al. actually teaches away from constructions such as in claims 37 and 83-85 which specifically recite backing structures other than foam plastic material. In this regard it is noted that DE SIMONE indicates that it is preferred that the adhesion of the rebond be to a foam plastics material. Thus, by using other backing structures against the rebond, the present invention departs even further from the teachings of DE SIMONE. Moreover, one of skill in the art using DE SIMONE as a guide would likely conclude that the possibility of failure the formed interface between the rebond and these non-foam backing structures would weigh heavily against attempting any such construction.

Finally, in the Office Action claims 9-13, 61-68, and 74 stand rejected under 35 U.S.C. 103(a) as being obvious over HIGGINS '857 and DE SIMONE and further in view of U.S. Patent 5,616,200 to Hamilton. Continued rejection on this basis is respectfully traversed and reconsideration is requested on the grounds as set forth above that the primary combination of references fails to establish a *prima facie* case of obviousness with respect to the base independent claims.

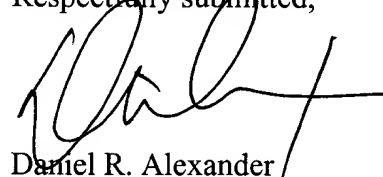
#### **CONCLUSION:**

For the reasons set forth above, it is respectfully submitted that all claims stand in condition for allowance. In the event that any issue remains unresolved, the Examiner is encouraged to contact the undersigned attorney in the hope that such issue may be resolved in an expedient and satisfactory manner.

To any extent required, a petition for an extension is hereby made and authorization is provided to deduct any fee necessary for the acceptance of this paper from Deposit Account 04-0500.

October 13, 2003  
MILLIKEN & COMPANY  
P. O. Box 1926  
Spartanburg, SC 29304

Respectfully submitted,



Daniel R. Alexander  
Attorney for Applicant(s)  
Registration Number 32,604  
Telephone: (864) 503-1372

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on October 13, 2003, along with a postcard receipt.



Daniel R. Alexander